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UNITED STATES ENVIRONMENTAL PROTECTION
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

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| Agency | Site: <u>Martha</u> |
| | ID #: <u>MOD980633069</u> |
| | Break: <u>10-6</u> |
| | Other: <u> </u> |

078D 91d

IN THE MATTER OF:

MARTHA C. ROSE CHEMICALS, INC.
Kansas City and Holden, Missouri,

and

AMERICAN STEEL WORKS, INC.
Kansas City and Holden, Missouri,

and

W.C. CAROLAN COMPANY, INC.
Kansas City and Holden, Missouri,

and

WALTER C. CAROLAN
Mission Hills, Kansas,

and

DWIGHT THOMAS

and

SHARON HAYES

and

CHARLES BUXTON

and

JAMES KNOX

and

DONALD McCOY

and

CITY OF HOLDEN, MISSOURI,

and

LEAR SIEGLER, INC.
Pasadena, California,

Respondents.

Proceedings Under Section 106
(a) of the Comprehensive
Environmental Response,
Compensation, and Liability
Act of 1980, 42 U.S.C. §9606
(a).

Docket No.

ORDER



40024382
SUPERFUND RECORDS

JURISDICTION

This Order is issued to Martha C. Rose Chemicals, Inc. (hereinafter Rose), American Steel Works, Inc. or Mo American Steel Works, Inc. (hereinafter American), W.C. Carolan Company, Inc. (hereinafter Carolan Company), Walter C. Carolan (hereinafter Carolan), Dwight Thomas (hereinafter Thomas), Sharon Hayes (hereinafter Hayes), Charles Buxton (hereinafter Buxton), James Knox (hereinafter Knox), Donald McCoy (hereinafter McCoy), the City of Holden, Missouri (hereinafter Holden) and Lear Siegler, Inc. (hereinafter Lear Siegler), pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9606(a), by authority delegated to the undersigned official by the Administrator of the United States Environmental Protection Agency (EPA) by EPA Delegation Nos. 14-14-A and 14-14-B, dated April 16, 1984. Authority to issue this Order was delegated to the Administrator of EPA by Executive Order 12316 dated August 14, 1981, 46 Fed. Reg. 42237 et seq. (1981).

FINDINGS OF FACT

1. Respondent Rose, a Missouri Corporation, operated, from early 1982 until the present, a business primarily engaged in the brokerage of PCBs and PCB items, in the processing of PCB capacitors and transformers for disposal, and in the decontamination of mineral oil dielectric fluids contaminated with PCBs. The principal facility at which Rose operated the aforementioned business is located at 500 W. McKissock, Holden, Missouri (hereinafter the Holden facility).

2. Respondent Holden owns the property, upon which Rose operates the aforementioned business, and leases the said property to Lear Siegler (a Delaware Corporation authorized to do business in the State of Missouri) which subleases the said property to Carolan Company, a Missouri Corporation.

3. Respondent American, pursuant to an oral agreement with Carolan Company, operates a steel fabricating business at 500 W. McKissock, Holden, Missouri. Its indoor operations are performed in the same building where Rose operated its PCB-related business.

4. Rose pays rent on the said property to American, a Kansas Corporation authorized to do business in the State of Missouri.

5. Respondent Walter C. Carolan owns 100% of the capital stock of Carolan Company and American and 51% of the capital stock of Rose. Carolan is also the chief executive officer and President of Rose, American and Carolan Company.

6. The work force of Rose are employees of American and received paychecks from Carolan Company and American.

7. Under authority of 40 C.F.R. §761.60(e), EPA-Region VII issued to Rose: (1) an approval, effective March 15, 1983, to decontaminate mineral oil dielectric fluids contaminated with PCBs at concentrations equal to or less than 10,000 ppm (this approval expired March 15, 1986); (2) an approval, effective October 15, 1983, to process PCB capacitors for disposal; and (3) an approval, effective July 1, 1984, to process PCB transformers for disposal. A condition of each approval was that Rose comply with all Federal environmental requirements.

8. As a result of an inspection of Rose's facility in Holden, Missouri, on or about November 3 and 4, 1983, it was determined that Rose was in violation of the regulations in 40 C.F.R. Part 761, promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. §2605(e), to-wit: the storage and marking of PCBs and PCB items (40 C.F.R. §§761.65 and 761.40, respectively).

9. As a result of the inspection referred to in paragraph 8, EPA issued a Complaint and Notice of Opportunity for Hearing to Rose on March 26, 1984, seeking penalties for the aforementioned violations. Rose and EPA entered into a Consent Agreement and Final Order whereby Rose admitted the violations, agreed to pay a civil penalty, and agreed to comply with certain provisions of 40 C.F.R. Part 761.

10. As a result of an inspection of Rose's facility conducted by EPA on or about August 7-15, 1984, it was determined that Rose had failed to comply with the provisions of the Consent Agreement and Final Order referred to in paragraph 9,

and was in violation of the regulations in 40 C.F.R. Part 761, promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605(e), to-wit: the storage, marking and disposal of PCBs and inadequate recordkeeping regarding PCBs (40 C.F.R. §§761.65, 761.40, 761.60, and 761.180, respectively). Rose was also in violation of the conditions of each of the approvals specified in paragraph 7, in violation of 40 C.F.R. §761.60(e).

11. As a result of the inspection referred to in paragraph 10, EPA issued a Complaint and Notice of Opportunity for Hearing to Rose on February 25, 1985, seeking penalties for the aforementioned violations. On or about September 27, 1985, Rose and EPA entered into a Consent Agreement and Final Order whereby Rose agreed to pay a civil penalty and to come into compliance with the applicable PCB rules and regulations in 40 C.F.R. Part 761.

12. In mid-1985, the Occupational Safety and Health Administration (OSHA) conducted an inspection at the Holden facilities used by Rose and American and found, based on samples

taken by OSHA, that the building, equipment, records, and other articles contained in the building were contaminated with PCBs. Rose and American were given notice of the results of this inspection.

13. Subsequent inspections of Rose's facility by EPA on December 19, 1985, January 7 and March 17, 1986, revealed continuing and additional marking, storage, disposal and distribution in commerce violations of the PCB regulations, 40 C.F.R. Part 761.

14. As part of Rose's operations, scrap metal from the processing of PCB items is salvaged and sold. In December of 1985, EPA collected samples from scrap metal distributed in commerce by Rose to two separate businesses in Kansas City, Missouri. Analyses of five (5) copper strip samples and seven (7) swab samples indicated the presence of PCBs in concentrations ranging from 19 ug/100 cm² to 40,000 ug/100 cm². The said scrap metal had not been decontaminated by Rose in accordance with the requirements of condition #2 of both the transformer

and capacitor processing for disposal approvals in violation of 40 C.F.R. §761.60(e). Rose was therefore also in violation of 40 C.F.R. §761.20(c) for distributing PCBs in commerce.

15. Respondent Rose has, since approximately March 1, 1986, ceased active operations onsite. A large inventory of PCBs, other hazardous substances, as well as generally widespread PCB contamination of equipment and materials located in buildings and elsewhere on site, exists at the Holden facility. PCBs have been improperly stored onsite longer than allowed under 40 C.F.R. § 761.65, thereby demonstrating Rose's unwillingness or asserted inability to properly dispose of PCBs and PCB items in accordance with 40 C.F.R. Part 761 and with the approvals specified in paragraph 7, above. In written statements to its customers (the generators of the PCBs) and EPA, Rose has expressed its unwillingness and inability to properly dispose of PCBs and PCB items at the Holden facility unless the generators of the said materials provide additional financial assistance.

16. On July 8, 1986, an EPA inspector toured the facility and noted that equipment formerly known to be at the facility based on observations by OSHA and EPA inspectors, was gone.

17. An EPA inspector was informed that equipment and documents from the Holden facility had been taken to several other properties, (hereinafter referred to as satellite properties). The removal was directed by Rose and American officials and done by American employees. The properties where equipment and records were allegedly taken include two properties owned by or under the the control of Dwight Thomas, two properties owned by or under the control of Sharon Hayes, property owned by or under the control of Charles Buxton, property owned by or under the control of James Knox and property owned by or under the control of Donald McCoy, to-wit:

Dwight Thomas:

Section 33, Township 46N, Range 27W
Johnson County, Missouri; and

Section 2, Township 45N, Range 27W
Johnson County, Missouri

Sharon Hayes:

Section 1, Township 45N, Range 28W
Johnson County, Missouri; and

Section 36, Township 46N, Range 28W
Johnson City, Missouri

Charles Buxton:

Property located 1.5 miles east of Horton, Kansas

Donald Knox:

Property adjoining Mr. Buxton's

Donald McCoy

100 W. Buffalo
Holden, Missouri 64040

18. On July 15, 1986, an EPA inspector served TSCA notices of inspection to each of the above named respondents except James Knox. Respondents Hayes and Thomas denied access to inspect without a warrant.

19. On July 17, 1986, administrative warrants to inspect the properties of Sharon Hayes and Dwight Thomas were issued by United States Magistrate Ralston.

20. Inspections were conducted on July 18, 1986, pursuant to warrants at the Sharon Hayes' and Dwight Thomas' properties. Equipment, including three flatbed trailers registered to Martha C. Rose Chemicals Co. Inc., was observed,

sampled and photographed at one of the Sharon Hayes' properties.

This equipment had previously been observed by an EPA inspector on-site at the Holden facility.

21. Analytical results on the samples taken indicated most items sampled were PCBs or PCB items as defined by 40 CFR § 761.3 (Attachment A).

22. On May 23, 1986, EPA issued an ORDER pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9606(a), Docket No. 86-F-0006, to among others, Martha C. Rose Chemicals, Inc., American Steel Works, Inc., W.C. Carolan Company, Inc., and Walter C. Carolan, which among other requirements, prohibited Rose, their agents, representatives, employees and consultants from removing any PCBs or PCB items located at the Holden facility, unless such disposal, handling or removal was approved by EPA.

23. On September 6, 1986, EPA and the Federal Bureau of Investigation (FBI) received reports that equipment previously

removed from the Holden facility to property owned or controlled by Sharon Hayes, was being removed again by unknown persons.

24. An FBI investigation determined that one flatbed trailer had been removed from the Hayes property to 2450 Charlotte Street, Kansas City, Missouri 64108. This address is known to be the location of offices for Rose, American, Carolan Company and Carolan. Mr. Dick Wagoner, owner and operator of Wagoner Truck Lines, told the FBI that his truck line had been contacted by a man who identified himself as J. Carolan, to engage his services to haul four trailers from the Hayes property to 2459 Charlotte Street, Kansas City, Missouri 64108. He said he was met at the Charlotte Street address when he delivered the first trailer by a man who identified himself as J. Carolan and paid \$200 in cash, the agreed price for the services.

25. Based on analytical results (see paragraph 21) done on a sample taken from equipment on this flatbed trailer as well as from the trailer itself during the July 18, 1986,

inspection, the trailer and equipment are PCB items within.

the meaning of the PCB regulations, 40 CFR Part 761.

26. Neither of the satellite properties listed in paragraph 17 and nor the property located at 2459 Charlotte Charlotte Street, Kansas City, Missouri 64108, are proper PCB storage facilities pursuant to 40 CFR Part 761 and removal of PCB items to these locations without EPA approval are violations of 40 CFR Part 761 and the ORDER, Docket No. 86-F-0006.

27. Based on the continuing violations of 40 CFR Part 761 and the CERCLA ORDER in Docket No. 86-F-0006 and the likelihood of continued attempts to remove PCB items without EPA approval, there exists actual releases and threatened future releases of PCBs and PCB items into the environment due to inadvertent contact as well as deliberate releases of PCBs into the environment.

CONCLUSIONS OF LAW

1. Respondents Rose, American, Carolan Company, Carolan, Dwight Thomas, Sharon Hayes, Charles Buxton, James Knox, Donald McCoy, Holden, and Lear Siegler are each a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

2. PCBs are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3. The real property and buildings located at 500 W. McKissock, Holden, Missouri, and each and every other satellite property whereon PCBs or PCB items are located are each separately and/or together a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment which has occurred

or which may occur constitutes a "release" as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

5. Removal and storage of PCBs and PCB items to the satellite sites defined in paragraph 17 above is in violation of 40 CFR Part 761 and the CERCLA ORDER, Docket No. 86-F-0006, issued on May 23, 1986.

DETERMINATION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned has determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the actual or threatened release of a hazardous substance from the facility(s). It has been further determined that in order to protect public health and welfare and the environment, it is necessary that the response actions, set forth in the following Order be undertaken. The response actions required by the terms of this Order are consistent with the National Contingency Plan, 40 C.F.R. Part 300, and will prevent or mitigate immediate

and significant risk of harm to human life or health and to
the environment.